March 20, 2018

Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Re: Oppose HR 4861 (Hollingsworth), EQUAL Act

Dear Representative,

The undersigned consumer, civil rights and faith groups write in strong opposition to HR 4861 (Hollingsworth), the Ensuring Quality Unbiased Access to Loans Act of 2018 (EQUAL Act). The bill exempts bank payday loans (also called "deposit advance products") from the Consumer Financial Protection Bureau's (CFPB) payday loan rule and also nullifies the Federal Deposit Insurance Corp.'s (FDIC) deposit advance product guidance. **The bill would pave the way for banks to return to abusive 200% to 300% APR balloon-payment bank payday loans that trap consumers and seniors on Social Security in a cycle of debt.**

Bank Payday Loans Are an Abusive Product.

A few years ago a small number of banks were making payday loans that differed little from the payday loans offered by traditional storefront lenders. Wells Fargo, U.S. Bank, Fifth Third Bank and Regions Bank offered so-called "deposit advance products," short-term, balloon-payment loans that were automatically repaid from the next deposit. For a person paid on a biweekly basis, the term of these loans would be at most 14 days, and often only a few days, if the advance was taken out when funds were running low right before payday. The fees were typically $7.50 or $10 per $100 loaned. The typical annual percentage rates (APR) for these loans were 225% to 300%%.

The Consumer Bureau did an extensive study of bank payday loans and found that the loans were just as toxic as their storefront cousins. The median borrower took out 14 loans per year and fourteen percent of borrowers had a median of 38 loans per year. Borrowers typically had an outstanding balance at least nine months of the year. While touted as a way to avoid overdraft or nonsufficient funds (NSF) fees, 65% of bank payday loan users incurred such fees, nearly five times more often than customers who did not use bank payday loans. Bank payday loans drained about half a billion dollars from bank customers annually.

The bank regulators also found that bank payday loans harmed consumers. As both the OCC and FDIC noted:

> These products share a number of characteristics seen in traditional payday loans, including: High fees; very short, lump-sum repayment terms; and inadequate attention to the consumer's ability to repay….
>
> Specifically, deposit advance customers may repeatedly take out loans because they are unable to fully repay the balance in one pay period while also meeting typical recurring and other necessary expenses (e.g., housing, food, and transportation). Customers may feel compelled to take out another loan very soon thereafter to make up for the shortfall. This is similar to the practice of ''loan flipping,'' which the OCC, the FDIC, and the Board have previously noted to be an **element of predatory lending.**

The Federal Reserve's supervisory statement emphasized the "significant consumer risks" bank payday lending poses.

Payday lending by banks was met by fierce opposition from virtually every sphere—the military community, community organizations, civil rights leaders, faith leaders, socially responsible investors, state legislators, and members of Congress.

__The Payday Loan Rule Does Not Hinder Responsible Bank or Credit Union Small Dollar Loans.__

The Consumer Bureau's final payday loan rule has little if any impact on responsible bank or credit union products. The bulk of the rule only applies to loans of 45 days or less – that is, for the most part, only balloon-payment loans that most financial institutions do not make. The ability-to-repay requirements do not apply to longer-term installment loans or lines of credit with more affordable payments.

Even for loans under 45 days, the rule has several provisions that effectively exempt relatively lower cost bank and credit union loans and loans made as an occasional accommodation. Loans by a bank or credit union that track the National Credit Union Administration's Payday Alternative Loan (PAL) rules are exempt. PAL loans are term loans with a term of one to six months; are between $200 and $1,000; have at least two, substantially equal installment payments; and have charges other than interest at 28% or less and application fees that do not exceed $20. Institutions must document income and limit borrowers to three loans in a 180-day period.

"Accommodation loans" by financial institutions are also exempt. These are loans made by an entity that makes 2,500 or fewer covered loans per year and does not earn more than 10% of its revenue from such loans.

Bank and credit union loans to their own deposit accountholders are also exempt from the payment protections in the rule as long as they do not charge overdraft or NSF fees if an automatic repayment results in a negative balance, or close the account in response to such a balance.

As a result of these carefully-crafted exemptions, financial institutions and their trade organizations were generally positive in their response to the final payday loan rule.

The **American Bankers Association** stated that it "**won a helpful exemption** in the Consumer Financial Protection Bureau's final small-dollar lending rule that protects banks' ability to make small-dollar "accommodation loans" to customers. The ABA's senior vice president note: "With today's rule, the bureau has reiterated its earlier view that banks can play an important role in meeting the needs of small-dollar borrowers….. [W]e hope that it will allow banks to expand programs to effectively meet the small-dollar credit needs of their customers."[1]

The **Independent Community Bankers of America (ICBA)** "**appreciates that the bureau's rule recognizes community banks as responsible lenders** that do not engage in abusive lending practices and work with their customers to establish favorable loan terms that reflect their customers' financial history and ability to repay." ICBA noted that "the bureau has exempted thousands of community banks" from the rule, "consistent with ICBA's

[1] ABA Banking Journal, "ABA Wins CFPB Exemption for 'Accommodation Loans" (Oct. 5, 2017).

recommendation . . . . This exemption will enable community banks the flexibility to continue providing safe and sustainable small-dollar loans to the customers who need it most."[2]

The **National Association of Federal Credit Unions** stated that the final rule "**takes into account the concerns raised by NAFCU and its members, avoiding for now any major disruption** in credit unions' ability to meet members' needs for short-term, small-dollar loans."[3]

The **Credit Union National Association** "is '**very pleased' with the final rule** the CFPB issued on small-dollar, short-term loans, otherwise known as payday loans or auto-title loans. 'This is an issue important to credit unions that want to be there to meet needs of members who need small dollar credit,' said CUNA's chief advocacy officer, Ryan Donovan. 'The proposal the CFPB put out last year would have significantly reduced the ability of credit unions to meet these borrowers' needs." Donovan, who **praised the CFPB's intentions in fighting 'debt traps**,' credited advocacy by CUNA and the leagues for getting the CFPB to alter its proposal.'"[4]

The FDIC's Deposit Advance Guidance Was Appropriate and Should Not be Nullified.

Both the OCC and the FDIC issued guidance to address concerns about bank payday loans. The OCC's guidance has since been rescinded but the FDIC's still stands.

The FDIC guidance merely requires banks to consider the borrower's ability to repay bank payday loans using information that is already in the bank's possession: the inflows and outflows from a consumer's account. Responsible banks already consider ability to repay. But banks making payday loans focused only on their ability to seize the next deposit, not whether the customer could handle rent, food and other expenses when the high-cost advance was repaid. In light of the heavy overdraft and NSF fees incurred by bank payday loan users, and the cycle of debt these loans created, the FDIC and OCC appropriately required banks to look back at the borrower's bank account history to assess whether the borrower could afford to repay the payday loan while meeting other expenses.

HR 4861 nullifies the current FDIC guidance and requires the bank regulator to issue regulations for "short-term, small-dollar loans or lines of credit." The mere focus on "short-term" loans is concerning, as balloon payment loans, even at low rates, are typically unaffordable. The bill requires only that these regulations meet vague standards consistent with safe and sound banking, fair access to financial services, and fair treatment. There is nothing in the bill that requires rules to prevent loans that are unaffordable, are not based on ability-to-repay, result in debt traps, trigger numerous overdraft and NSF fees, or leave people unable to meet other expenses.

HR 4861 Broadly Preempts State Laws

Finally, HR 4861 states that the regulations to be issued by the bank regulators "shall supersede any State law that sets standards for short-term, small-dollar loans or lines of credit made available by insured depository institutions." This broad preemption language applies to both federal- and **state- chartered banks** and appears to potentially preempt state laws that do

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[2] ICBA , "ICBA Statement on CFPB Final Small-Dollar Lending Rule" (Oct 05, 2017).

[3] NAFCU, "CFPB heeds NAFCU, CU concerns in final payday rule" (Oct. 6, 2017).

[4] CU Today, "Overall, CFPB Listened To CUs On Payday Loan Rule, Says CUNA; 5 States Complete Hill Hikes" (Oct. 10, 2017).

not substantially interfere with banks and are not currently preempted by national bank regulations. States could also lose authority over abusive products by the banks that they charter and regulate in their home state.

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Responsible bank and credit union small dollar loans are already exempt from or unhindered by the Consumer Bureau's payday loan rule and the FDIC's deposit advance guidance. The only impact of HR 4861 would be to pave the way for banks to return to making abusive 200% to 300% APR payday loans that are destructive for their customers. We urge you to oppose HR 4861.

Yours very truly,

Allied Progress
Americans for Financial Reform
Arkansans Against Abusive Payday Lending
Arkansas Community Organizations
AZ Community Action Association
California Reinvestment Coalition
CASH Campaign of Maryland
Center for Economic Integrity
Center for Responsible Lending
Connecticut Legal Services, Inc.
Consumer Action
Consumer Federation of America
Consumers for Auto Reliability and Safety
Consumers Union
DeBruler, Inc. (Oklahoma), Affordable Housing Development & Nonprofit Consulting
Demos
Eastern Jackson County Justice Coalition
Empire Justice Center
Financial Pathways of the Piedmont
Florida Alliance for Consumer Protection
Florida Consumer Action Network
Heartland Alliance for Human Needs & Human Rights
Help Network of Northeast Ohio
HomesteadCS
Hoosier Action
Indiana Institute for Working Families
Interfaith Center on Corporate Responsibility
Jacksonville Area Legal Aid, Inc.
Kentucky Equal Justice Center
Maryland Consumer Rights Coalition
Montana Organizing Project
National Advocacy Center of the Sisters of the Good Shepherd
National Association for Latino Community Asset Builders
National Association of Consumer Advocates
National Center for Law and Economic Justice
National Community Reinvestment Coalition
National Consumer Law Center (on behalf of its low income clients

National Consumers League
NC Justice Center
New Jersey Citizen Action
New Jersey Tenants Organization
PathWays PA
People's Action Institute
People’s Action Institute
Progress Florida
Project IRENE
Public Citizen
Public Good (Berkley, CA)
Public Justice
Public Justice Center (Baltimore, MD)
Public Law Center (Santa Ana, CA)
Reinvestment Partners
Tennessee Citizen Action
The Farmworker Association of Florida, Inc.
The Leadership Conference on Civil and Human Rights
U.S. PIRG
United Way of Southern Cameron County (Texas)
Virginia Citizens Consumer Council
Virginia Poverty law Center
West Virginia Center on Budget and Policy
Woodstock Institute
WV Citizen Action Group